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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE CHARLES R. BREYER

IN RE BROCADE COMMUNICATIONS, )  
SYSTEMS, INC. DERIVATIVE ) Case No. C 05-2233  
LITIGATION )  
\_\_\_\_\_) San Francisco, California  
December 4, 2009

**TRANSCRIPT OF PROCEEDINGS**

**APPEARANCES:**

**For Plaintiff** DEWEY & LEBOEUF LLP  
**Brocade:** 1950 University Avenue, Suite 500  
East Palo Alto, California 94303-2225  
**BY:** **PETER ROOT, ESQUIRE**

**For Gregory Reyes:** MORGAN, LEWIS & BOCKIUS LLP  
One Market, Spear Street Tower  
San Francisco, California 94105  
**BY:** **JOHN H. HEMANN, ESQUIRE**

**Reported By:** *Katherine Powell Sullivan, CSR #5812*  
*Official Reporter - U.S. District Court*

## PROCEEDINGS

**DECEMBER 4, 2009**

10:18 A.M.

**THE CLERK:** Calling case C 05-2233, In Re Brocade  
Communication Systems.

Appearances, Counsel.

**MR. ROOT:** Good morning, Your Honor.

Peter Root, from Dewey & Leboeuf, on behalf of Brocade, acting through the Special Litigation Committee.

**MR. HEMANN:** Good morning.

John Hemann for Mr. Reyes.

**THE COURT:** Where were you sitting?

**MR. HEMANN:** In the back row, sort of closer to the door today. Closer to the door.

I was sad the other day. I felt left out.

**THE COURT:** I found you out.

**MR. HEMANN:** You did. You spotted me back there.

**THE COURT:** You sat back there with the hope --

**MR. HEMANN:** That I would not be found out.

**THE COURT:** Exactly.

**MR. HEMANN:** Yes, indeed.

**THE COURT:** Exactly.

**MR. HEMANN:** That's why they put you high up on the bench.

**THE COURT:** So I can see who is trying to hide.

1                   **MR. HEMANN:** That's right.

2                   **THE COURT:** Judge Weiverly used to do that.

3                   **MR. HEMANN:** Yes.

4                   **THE COURT:** Judge Weiverly used to come in -- this is  
5 his court. Judge Weiverly would come in, and if he saw anybody  
6 in the courtroom that he didn't know why they were there, he  
7 would send Max Thompson, his courtroom deputy, out to find out  
8 why they were there.

9                   But I knew why you were there.

10                  **MR. HEMANN:** Yes.

11                  **THE COURT:** Right. Great. So, welcome.

12                  **MR. HEMANN:** Thank you, Your Honor.

13                  **MR. ROOT:** Thank you.

14                  **THE COURT:** This is a settlement, right?

15                  **MR. ROOT:** That's right, Your Honor.

16                  **THE COURT:** And it's a settlement we are not sure you  
17 have to even ask my consent or approval.

18                  **MR. ROOT:** That's correct, Your Honor.

19                  **MR. HEMANN:** Correct, Your Honor.

20                  **THE COURT:** Okay. So I grant my consent and  
21 approval, even though maybe I don't have to.

22                  **MR. HEMANN:** Thank you, Your Honor.

23                  **MR. ROOT:** Thank you very much.

24                  **THE COURT:** Thank you.

25                  So that ends that, right?

1                   **MR. ROOT:** It ends that and the case, yes.

2                   **MR. HEMANN:** The derivative case, the In Re Brocade  
3 case is now over.

4                   **THE COURT:** Yes.

5                   **MR. ROOT:** We'll do a dismissal following your  
6 approval of the settlement --

7                   (Simultaneous colloquy.)

8                   **THE COURT:** I approve the settlement, yes.

9                   **MR. ROOT:** We'll file, in the next few days, a  
10 stipulation of dismissal.

11                  **THE COURT:** Great.

12                  **MR. HEMANN:** Check one box, Your Honor.

13                  **THE COURT:** One box accepted.

14                  **MR. HEMANN:** Thank you.

15                  **MR. ROOT:** Thank you, Your Honor.

16                  **THE COURT:** No one is here to oppose it?

17                  **MR. ROOT:** There was no opposition.

18                  **MR. HEMANN:** Thank you, Your Honor. Nice to see you.

19                  **THE COURT:** I expect to see you even closer in the  
20 coming months.

21                  **MR. HEMANN:** I always enjoy being here, rather than  
22 the back row, Your Honor. Thank you.

23                  (At 10:21 a.m. the proceedings were adjourned.)

24                  - - - -

25  
*Katherine Powell Sullivan, CSR, RPR, CRR*  
*Official Reporter - U.S. District Court*  
*(415) 794-6659*

**CERTIFICATE OF REPORTER**

3 I certify that the foregoing is a correct transcript  
4 from the record of proceedings in the above-entitled matter.

6 DATE: Saturday, December 12, 2009

s/b Katherine Powell Sullivan

Katherine Powell Sullivan, CSR #5812, RPR, CRR  
U.S. Court Reporter